

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7024 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DIPAK PETROLEUM AGENCY

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR KC SHAH, A.G.P. for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 30/10/96

ORAL JUDGEMENT

Rule. Service of Rule waived by Mr.K.C.Shah, learned A.G.P. for the respondents. On 10.10.1996 it was agreed that the matter should be finally heard and decided. Accordingly the matter was heard for final disposal.

2. The statement of facts alleged in the petition

would indicate that the petitioner was granted licence as Wholesale Distributors of Kerosene. The said licence is valid upto 31.12.2000. Accordingly the petitioner has been running the petitioner's business since 1987. On or around 22.11.1995 the inspection was carried out at the depot of the petitioner in absence of the petitioner and accordingly the petitioner was not present on that occasion. On or around 27.2.1996 show cause notice was issued by the District Supply Officer, Ahmedabad pursuant to the inspection, calling upon the petitioner to show cause why the petitioner's licence be not cancelled as a result of the allegations levelled in the said notice. On or around 20.8.1996 the petitioner submitted written reply inter-alia denying the allegations by tendering the detailed explanation to satisfy the authority as to why the drastic measure of cancellation of licence was unwarranted and unjustified. On 29.8.1996 the District Supply Officer, respondent No.2 herein, as per his order in question, cancelled the licence of the petitioner. It is the case of the petitioner that while doing so the said authority relied upon extraneous material and the ground which did not form part of the show cause notice. No reasons are given for not accepting the contentions of the petitioner and for holding the petitioner guilty. It is, therefore, alleged that the impugned order dated 29.8.1996 passed by the respondent No.2 is ex-facie arbitrary and illegal as being in violation of principles of natural justice.

3. It is further the case of the petitioner that despite the licence of the petitioner having been cancelled on 29.8.1996 the respondent No.2 suspended the licence. Hence the said order is also under challenge.

4. Having heard the learned Advocate for the petitioner and the learned A.G.P. for the State and Mr.Pahva, learned Advocate having made a statement that the petitioner would challenge the order of suspension by way of regular appeal before the concerned authority the only order which is required to be scrutinised is the order of cancellation of licence.

5. On going through the show cause notice it might be visualised from ground No.3 that the kerosene retailers were not supplied sufficient stock and were made to toss themselves for supply of kerosene from time to time and that they were ultimately supplied the kerosene on the last day of the month and that too during the late hours of night. The material in support of this allegation in the form of the statements of the concerned retailers has admittedly not been supplied with the show

cause notice or at any time before the matter is decided by the respondent No.2. Thus, the ground of non-observance of natural justice, at least to this extent, clearly appears to have been made out in this petition. In support of this ground Mr.Pahva has made reference to the decision of this Court in the case of Kiran Oil Industries V/s. District Collector, Jamnagar, reported in 1996 (1) G.L.H. 614, where this Court had an occasion to make following observation while dealing with Sections 6A and 6B of the Essential Commodities Act read with Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 :

"It, therefore, follows that any material on which reliance is to be placed must be disclosed to the person on whom show cause notice is issued, to enable him to have an appropriate opportunity of being heard in the matter. It is also incumbent upon the authorities to look into the defence raised by the petitioner with a view to come to the conclusion whether confiscation would be justified or not. Therefore, where preliminary statements are recorded at the time of raid and thereafter, show-cause notice is issued under Section 6B, all that material which the authority may rely upon is to be again put to the person concerned to enable him to defend himself in the matter. In the present case, the concerned authorities have dealt with the matter rather casually and have not considered the defence raised by the petitioner before coming to the conclusion that the goods were required to be confiscated."

6. In the result the impugned order of cancellation of licence rendered by respondent No.2 is required to be quashed and set aside and the matter is required to be remanded to the concerned respondent for fresh consideration in accordance with law on merits. Other grounds stated in the show cause notice are not dealt with in this petition and are left open since the matter is being remanded to the respondent No.2 for its reconsideration. The result is that the impugned order (Annexure : C) dated 29.8.1996 for cancellation of the petitioner's licence is hereby quashed and set aside and the matter is remanded to the respondent No.2 for reconsidering the same in accordance with law and after giving opportunity to the petitioner to show cause against the notice as well as on the material which is sought to be relied upon. It is expected that as and when the Appeal against the suspension order is filed the

same shall be expeditiously dealt with and decided by the Authority. Rest of the prayer in this petition is not entertained, as stated above.

Rule made partly absolute to the aforesaid extent. No order as to costs.

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